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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/817,229	04/02/2004	Virgil E. O'Neil	HENTE-095A	3023
7663	7590	10/12/2006	EXAMINER	
STETINA BRUNDA GARRED & BRUCKER			KING, ANITA M	
75 ENTERPRISE, SUITE 250			ART UNIT	
ALISO VIEJO, CA 92656			PAPER NUMBER	
			3632	

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/817,229

Applicant(s)

O'NEIL ET AL.

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 9, 13, 16, 17, 20, 22-24, 27-34 and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11, 18, 19, 21, 25, 26, 35, 36, 38 and 39 is/are rejected.
- 7) ☒ Claim(s) 7, 8, 10, 12, 14 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

This is the second office action for application number 10/817,229, Suspended Platform for Water Heaters, filed on April 2, 2004.

### ***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Election/Restrictions***

Claims 9, 13, 16, 17, 20, 22-24, 27-34, and 37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 17, 2006.

### ***Claim Objections***

Claims 26 and 36 are objected to because of the following informalities: claim 26 currently depends from claim 9, however, based on the preamble, it appears that claim 26 should depend from claim 19, for examination purpose, the examiner will assume it was intended for claim 26 to depend from claim 19; and claim 36 currently depends

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from itself, it appears that claim 36 should have depend from claim 35, for examination purposes, the examiner will assume that the applicant intended for claim 36 to depend from claim 35. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 25, 35, 36, 38, and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 recites the limitation "the depending support rods" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 35 recites the limitation "the base" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 36 recites the limitation "the lower support means" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 39 recites the limitation "the upper frame means" in line 1. There is insufficient antecedent basis for this limitation in the claim.

There is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble in claim 35 clearly indicates that a subcombination is being claimed, e.g., "a suspended platform for suspending an appliance from a plurality of support

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members...." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "a suspended platform," the appliance being only functionally recited. This presents no problem as long as the body of the claim also refers to the appliance functionally, such as, "for attachment to said appliance."

The problem arises when the appliance is positively recited within the body of the claim, such as, "the upper frame means is fastened to the appliance," cited in claim 39. There is an inconsistency within the claim; the preamble indicates subcombination, while in at least one instance in the body of the claim there is a positive recital of structure indicating that the combination of a suspended platform and an appliance are being claimed. The examiner cannot be sure if applicant's intent is to claim merely the suspended platform or the suspended platform in combination with the appliance.

Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the suspended platform alone or the combination of the suspended platform and the appliance. Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the combination and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 11, 19, 21, 35, 36, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,758,010 to Wright. Wright discloses a suspended platform (10) comprising: a lower frame having a base (30) with side walls (22) extending from the base and joined to form a fluid tight container, the base having sufficient strength to support a small appliance thereon when the lower frame is suspended from support members (18); at least three connectors (86) each fastened to at least one of the side walls, each connector being configured to removably fasten a different one of the support members; wherein the at least three connectors comprise connector means (88) for passing the support members through a portion of the lower frame; wherein the side walls of the lower frame form a plurality of corners, the connectors comprise tubes located at those corners and connected to the side walls, the tubes being sized to allow passage of the support members; wherein the base is rectangular; at least four depending support members (18) arranged in a rectangle, the support members each having a distal end fastened to a different one of the four connectors; and a kit.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright in view of U.S. Patent 3,239,104 to Scholle or U.S. Patent 5,143,178 to Latham, Jr., hereinafter, Latham. Wright discloses the claimed invention except for the limitation of a drain fitting on one of the sidewall or base. Scholle teaches a platform (10) having a sidewall (11) and a base (13) wherein a drain fitting (12) is on the sidewall. Latham teaches a platform (10) having a sidewall and a base (12) wherein a drain fitting (15) is on the base. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the platform in Wright to have included a drain fitting positioned on either the side wall or the base as taught by Scholle and Latham, respectively, for the purpose of providing a means for draining fluid collected in the platform due to condensation disposed on the appliance.

***Allowable Subject Matter***

Claims 7, 8, 10, 12, 14, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Claims 25 and 39 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 2,316,463 to Skulina

U.S. Patent 2,901,016 to Wilbricht

U.S. Patent 2,947,585 to Fazio

U.S. Patent 2,974,994 to Goldsmith

U.S. Patent 4,032,102 to Wolf et al.

U.S. Patent D250,376 to Schoenbrun

U.S. Patent 4,127,252 to Splawn

U.S. Patent 4,201,307 to Malloy

U.S. Patent 4,316,545 to Hartnell

U.S. Patent 4,815,563 to Puccinelli et al.

U.S. Patent 5,746,405 to Dvorak et al.

U.S. Patent 6,311,626 to Roberts

Skulina discloses a suspended tray having a base and a sidewall including a cut out to keep water off the tray. Wilbricht discloses a suspended basket having connectors and support members inserted through the connectors. Fazio discloses a suspended tray



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having a lower frame including a base and sidewalls and connectors for suspending the tray from straps. Goldsmith discloses a lifting bridle having a platform and support members attached to the platform for suspension. Wolf et al. disclose a tray suspension means. Schoenbrun discloses a hanging support. Splawn discloses a suspension support unit for large objects. Malloy discloses a suspended receptacle having a plurality of support members for suspending the receptacle. Hartnell discloses a hanging tool tray. Puccinelli et al. disclose an adjustable post for suspending a scaffolding platform. Dvorak et al. disclose a water heater seismic support system. Roberts discloses a hanging storage shelf system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Anita M. King  
Primary Examiner  
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October 1, 2006